CLERK'S COPY

CERTIFICATE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. 559

ARTHUR GOOCH

vs.

THE UNITED STATES OF AMERICA

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

FILED OCTOBER 29, 1935

SUPREME COURT OF THE UNITED STATES

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No. 559

ARTHUR GOOCH

vs.

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ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

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1 In United States Circuit Court of Appeals for the Tenth Judicial Circuit

[File endorsement omitted.]

No. 1305

ARTHUR GOOCH, APPELLANT

vs.

UNITED STATES OF AMERICA, APPELLEE

Appeal from the District Court of the United States for the Eastern District of Oklahoma

CERTIFICATE OF QUESTIONS OF LAW

Filed Oct. 8, 1935

Statement

Gooch was convicted and sentenced to be hanged under an indictment charging that he, with one Nix, kidnaped two officers at Paris, Texas, "for the purpose of preventing his (Gooch's) arrest by the said peace officers in the State of Texas", and transported them in interstate commerce from Paris, Texas, to Pushmataha County, Oklahoma, and at the time of the kidnaping did bodily harm and injury to one of the officers from which bodily harm the officer was suffering at the time of his liberation by Gooch and Nix in Oklahoma.

The proof supports the charge. It established these facts: Gooch and Nix, while heavily armed, were accosted by the officers at Paris, Texas. To avoid arrest, Gooch and Nix resisted and disarmed the officers, unlawfully seized and kidnaped them and transported them by automobile from Texas to Oklahoma, and liberated them in the latter State. During the time Gooch and Nix were kidnaping the officers they inflicted serious bodily injury upon one of the officers, from which injury he was suffering at the time of such liberation in the State of Oklahoma.

2 *Questions*

1. Is holding an officer to avoid arrest within the meaning of the phrase, "held for ransom or reward or otherwise", in the act of June 22, 1932, as amended May 18, 1934 (48 St. 781), 18 U. S. C. A. 408a?

2. Is it an offense under Section 408a, supra, to kidnap and transport a person in interstate commerce for the purpose of preventing the arrest of the kidnaper?

ORIE L. PHILLIPS,
GEO. T. MCDERMOTT,
SAM G. BRATTON,
Judges of the United States Circuit Court of Appeals Sitting in Said Case.

In the United States Circuit Court of Appeals for the Tenth Judicial Circuit

I, Albert Trego, Clerk of the United States Circuit Court of Appeals for the Tenth Judicial Circuit, do hereby certify that the foregoing is the original signed certificate of questions of law filed and entered of record in said cause on the 8th day of October 1935, in case No. 1305, Arthur Gooch, appellant, versus United States of America, appellee.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Tenth Circuit at my office in the city of Denver, Colorado, on the eighth day of October, A. D. 1935.

[SEAL]

ALBERT TREGO,
Clerk United States Circuit Court of Appeals for the Tenth Circuit.
By H. A. MCINTYRE,
Deputy Clerk.

(Endorsement on cover:) Enter Arthur Gooch, pro se. In forma pauperis. File No. 40113. U. S. Circuit Court of Appeals, Tenth Circuit. Term No. 559. Arthur Gooch vs. The United States of America. Certificate. Filed October 29, 1935. Term No. 559 O. T. 1935.

U. S. GOVERNMENT PRINTING OFFICE: 1935

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. 559

ARTHUR GOOCH

vs.

THE UNITED STATES OF AMERICA.

BRIEF OF ARTHUR GOOCH ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT.

W. F. RAMPENDAHL,
CHAL S. WHEELER,
E. M. FRYE,
Attorneys for Appellant.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. 559

ARTHUR GOOCH

vs.

THE UNITED STATES OF AMERICA.

BRIEF OF ARTHUR GOOCH ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT.

This case comes to this Court by virtue of the action of the Circuit Court of Appeals for the Tenth Circuit in certifying two questions to this Court.

Jurisdiction.

The sentence and judgment in the District Court below were entered on June 19, 1935 (R. 28). The Circuit Court of Appeals on October 8, 1935, certified two questions on the construction of the statute involved here to this Court and the certificate was filed in this Court on October 29, 1935. On November —, 1935, this Court entered an order

accepting jurisdiction on the questions certified under the provisions of 28 U. S. C. A., Sec. 346.

Questions Presented.

1. Is holding an officer to avoid arrest within the meaning of the phrase, "held for ransom or reward or otherwise" in the Act of June 22, 1932, as amended May 18, 1934 (48 St. 781), 18 U. S. C. A. 408a?

2. Is it an offense under Section 408a, *supra*, to kidnap and transport a person in interstate commerce for the purpose of preventing the arrest of the kidnapper?

Statute Involved.

Section 408a, Title 18 U. S. C. A., provides:

> Whoever shall knowingly transport or cause to be transported, or aid or abet in transporting, in interstate or foreign commerce, any person who shall have been unlawfully seized, confined, inveigled, decoyed, kidnaped, abducted, or carried away by any means whatsoever and held for ransom or reward or otherwise, except, in the case of a minor, by a parent thereof, shall, upon conviction, be punished (1) by death if the verdict of the jury shall so recommend, provided that the sentence of death shall not be imposed by the court if, prior to its imposition, the kidnaped person has been liberated unharmed, or (2) if the death penalty shall not apply nor be imposed the convicted person shall be punished by imprisonment in the penitentiary for such term of years as the court in its discretion shall determine: Provided that the failure to release such person within seven days after he shall have been unlawfully seized, confined, inveigled, decoyed, kidnaped, abducted or carried away shall create a presumption that such person has been transported in interstate or foreign commerce, but such presumption shall not be conclusive.

Statement.

The indictment, omitting formal parts, reads as follows:

"And the Grand Jurors, aforesaid, upon their oaths aforesaid, do find, present and charge that, on or about the 25th day of October, 1934, the said Arthur Gooch whose more full true and correct name is at this time to the Grand Jurors unknown, hereinafter referred to as defendant, did wilfully, wrongfully, unlawfully and feloniously, at Paris in the State of Texas, seize, kidnap, abduct, carry away and hold R. N. Baker and H. R. Marks, whose more full, true and correct names are at this time to the Grand Jurors unknown, both of whom at said time were peace officers in the State of Texas, a more accurate description of their official character being at this time to the Grand Jurors unknown, for the purpose of preventing his arrest by the said peace officers in the State of Texas; and did then and there wilfully, wrongfully, knowingly, unlawfully and feloniously transport and cause to be transported the said R. N. Baker and H. R. Marks, by threats and force of arms, against their will, in interstate commerce, overland by means of an automobile, a more accurate description of which is at this time to the Grand Jurors unknown, from the City of Paris in the State of Texas to a place on the highway at or near Cloudy in Pushmataha County, in the Eastern District of Oklahoma and within the jurisdiction of this Court; and at the time of the seizing, kidnapping, abducting and carrying away of the said R. N. Baker and H. R. Marks, and the transportation of said persons from the State of Texas into the Eastern District of Oklahoma, as aforesaid, in interstate commerce, that the said defendant, acting with one Ambrose Nix, who at all times during the commission of the crime aforesaid was present, participating in all the acts above set forth, and aiding and abetting the said defendant in all of said acts, did bodily harm to one of said kidnapped persons aforesaid, to-wit: R. N. Baker, by

forcing him, by force and violence, through the glass of a showcase at the filling station in Paris, Texas, where the said R. N. Baker and H. R. Marks were kidnapped as aforesaid, a more accurate description of said filling station being at this time to the Grand Jurors unknown, and cutting the said R. N. Baker and causing him to be cut on his left hip on the glass in said showcase, from which physical injury and harm the said R. N. Baker was suffering at the time he was liberated by the said defendant in the Eastern District of Oklahoma, as aforesaid contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America."

A brief summary of the evidence is as follows:

R. N. Baker and H. R. Marks, two police officers of the City of Paris, Texas, were traveling around said city on the morning of November 26, 1934. They observed a car standing in front of what was known as the Clyde Moore filling station. Inside the station an employee of the station was repairing a tire and standing by him as if aiding him in repairing the tire was a man who appeared at the trial as Arthur Gooch. The officers alighted from their car and approached this man and inquired as to the ownership of the car outside. The man replied that it was his. Upon being asked for the title papers the man replied he did not have the papers with him. One of the officers, R. N. Baker then motioned to the other officer, H. R. Marks and Marks moved over towards Gooch. Gooch and Marks grappled with each other and both attempted to draw their guns. Baker attempted to draw his gun; also to go to Marks assistance, when turning his head he saw a man at his left who later proved to be Ambrose Nix. Nix covered Baker with a gun and said "Hands up." Baker continued to try to draw his gun and Nix then jammed his gun in

Baker's back and pushed him against a glass show case in the filling station. The glass in the showcase broke and the broken glass made a cut in Baker's leg. Gooch in the meantime had disarmed his adversary H. R. Marks (R. 43). Gooch and Nix then compelled the officers to get into the police car and they then drove until about nine o'clock that night at which time they reached a point near Snow, Oklahoma (R. 45). Here Gooch and Nix released the officers and drove away (R. 46).

Summary of Argument.

The two questions certified to this Court by the Circuit Court of Appeals should be answered in the negative for the reason that:

(a) The statute herein involved being highly penal any doubt as to its meaning must be resolved in favor of the accused.

(b) Holding an officer to avoid arrest is not within the meaning of the phrase "held for ransom or reward or otherwise" in the Act of Congress of May 18, 1934, 18 U. S. C. A. 408a.

(c) The words "or otherwise" are general words immediately following the specific enumeration "ransom or reward" and in accordance with the rule of *ejusdem generis* draw their meaning therefrom and should be construed to mean acts of a similar or kindred nature.

(d) The words "or otherwise" having been construed by this Court prior to the enactment of the statute involved herein and having a definitely accepted legal meaning, such construction and meaning must be presumed to have been known to Congress at the time of the passage of this act and used accordingly.

(e) The words of the statute are plain and unambiguous and there is no occasion to go to the committee reports to ascertain their meaning but in the event the committee reports are resorted to, they themselves show there was no intention on the part of Congress to make the words "or otherwise" all inclusive.

(f) To hold that the words "or otherwise" are all inclusive and intended to cover any purpose for which a kidnapped person is held, it would be necessary to expunge the words "ransom or reward" as meaningless and surplusage in direct contravention of the rule that all words of a statute are to be given a meaning if possible.

(g) Before a person may be convicted under a penal law his act must come plainly and unmistakably within the statute.

(h) When Gooch carried the officers into Oklahoma he can no longer be said to have held the officers for the purpose of preventing his arrest at Paris in the State of Texas.

ARGUMENT.

As stated before this case comes to this Court by virtue of the action of the Circuit Court of Appeals for the Tenth Circuit in certifying two questions to this Court as follows:

1. Is holding an officer to avoid arrest within the meaning of the phrase, "held for ransom or reward or otherwise" in the act of June 22, 1932, as amended May 18, 1934 (48 St. 781), 18 U. S. C. A. 408a?

2. Is it an offense under section 408a, *supra,* to kidnap and transport a person in interstate commerce for the purpose of preventing the arrest of the kidnapper?

It will be immediately noted that these two questions in effect involve the same proposition and they will be considered and argued together under the following

Proposition.

IT IS NOT AN OFFENSE UNDER THE ACT OF JUNE 22, 1932, AS AMENDED MAY 18, 1934, (48 ST. 781) 18 U. S. C. A. 408A TO KIDNAP AND TRANSPORT A PERSON IN INTERSTATE COMMERCE FOR THE PURPOSE OF PREVENTING THE ARREST OF THE KIDNAPPER FOR THE REASON THAT SUCH PURPOSE IS NOT INCLUDED IN NOR CONTEMPLATED BY THE PHRASE OF SUCH ACT "HELD FOR RANSOM OR REWARD OR OTHERWISE."

The pertinent part of the statute herein involved reads as follows:

> "Whoever shall knowingly transport or cause to be transported, or aid or abet in transporting, in interstate or foreign commerce, any person who shall have been unlawfully seized, confined, inveigled, decoyed, kidnaped, abducted, or carried away by any means whatsoever and held for ransom or reward or otherwise, except, in the case of a minor, by a parent thereof, shall, upon conviction, be punished (1) by death if the verdict of the jury shall so recommend, provided that the sentence of death shall not be imposed by the court if, prior to its imposition, the kidnaped person has been liberated unharmed, or (2) if the death penalty shall not apply nor be imposed the convicted person shall be punished by imprisonment in the penitentiary for such term of years as the court in its discretion shall determine. * * *"

The above act was an amendment to the Act of June 22, 1932 (c. 271, Sec. 1, 47 Stat. 326), which was commonly known and designated as the Lindbergh kidnapping law. The original act made no provision for the imposition of the death penalty. The original act further provided that the kidnapped person must be held for *ransom or reward.* The amended act added the words "or otherwise" after

the words "ransom or reward" in the original act and permits the imposition of the death penalty where the kidnapped person is harmed.

We have noted that the charging part of the indictment returned in this case alleges that the officers were kidnapped and transported into *Oklahoma* for the purpose of preventing the arrest of Arthur Gooch at *Paris, in the State of Texas.* We have further noted that the statute involved in this case states that to constitute an offense under same, that in addition to transporting the kidnapped person in interstate or foreign commerce, said kidnapped person must have been held for "ransom or reward or otherwise."

It must be conceded that the officers mentioned in the certified questions were not held after having been kidnapped for ransom or reward. The indictment charges that they were kidnapped and held to prevent an arrest of the kidnapper in the State of Texas. With this premise before us the issues immediately come to the surface.

It necessarily follows that appellee must urge, in order to sustain the judgment rendered in this case, that the general terms "or otherwise" following the specific terms of the statute *ransom or reward* is all inclusive and brings this case within the scope of the statute under which the prosecution is proceeding. It is the contention of the appellant herein that the facts alleged in the indictment, that is, the kidnapping of the officers in order to prevent the arrest of Gooch and Nix does not bring this case within the statute involved. We earnestly contend that the term "or otherwise" is used in its restricted sense in accordance with the familiar rule of *ejusdem generis.* As the principles that are involved in the construction of criminal statutes are intertwined with the authorities setting forth the application of the rule *ejusdem generis* we wish to preface our argument by a few brief excerpts from the opinions of this Court in regard to the construction of criminal statutes.

Almost from the beginning of our government we find our courts speaking in one accord with reference to the construction of penal laws. In the case of *United States* v. *Wiltberger*, 5 Wheat. 76, 79, 5 L. Ed. 37, 42, Chief Justice Marshall delivering the opinion of the Court spoke as follows:

> "The rule that penal laws are to be construed strictly is perhaps not much less old than construction itself. It is founded on the tenderness of the law for the rights of individuals; and on the plain principles that the power of punishment is vested in the legislature and not in the judicial department. It is the legislature, not the court, which is to define a crime and ordain its punishment. *To determine that an action is within the intention of the statute, its language must authorize us to say so. It would be dangerous indeed to carry the principle that a case which is within the reason or mischief of a statute is within its provisions so far as to punish a crime not enumerated in the statute because it is of equal atrocity, or of kindred character with those which are enumerated.* If this principle has ever been recognized in expounding criminal law, it has been in cases of considerable irritation which it would be unsafe to consider as precedents forming a general rule for other cases." (Italics ours.)

> "There are no constructive offenses, and before one can be punished it must be shown that his case is plainly within the statute" *Fasulo* v. *United States*, 272 U. S. 620.

And in *Harrison* v. *Vose*, 9 Howard, 372, 378 this Court said:

> "In the construction of penal statutes, it is well settled that all reasonable doubts concerning their meaning ought to operate in favor of the respondents."

This rule in regard to the construction of criminal statutes is so well settled that we do not deem it neces-

sary to cite further authorities on the proposition especially as many of the cases we cite upon the application of the rule of *ejusdem generis* also involve the construction of criminal statutes.

With the above rule in regard to the construction of penal laws in mind we assert that upon the application of the rule of *ejusdem generis* to the words "or otherwise" the indictment returned in this case must fall as it alleges no offense within the context of the statute here involved or contemplated by the legislative body that brought the statute into existence.

Corpus Juris, vol. 59, pages 981, 982 well states the rule.

> "By the rule of construction known as *ejusdem generis,* where general words follow the enumeration of particular classes of persons or things, the general words will be construed as applicable only to persons or things of the same general nature or class as those enumerated. And this rule has been especially applicable to penal statutes. The rule expressed is for the obvious reason that if the legislature had intended the general words to be used in their unrestricted sense they would have made no mention of the particular classes."

The Supreme Court of Oklahoma in the case of *Board of Com's'rs* v. *Grimes,* 182 Pac. 897, 75 Okla. 210, said:

> "General words do not sustain or amplify particular terms preceding them, but are themselves restricted and explained by the particular terms."

The words "or otherwise" is defined in Words and Phrases, vol. 3, page 830 (2nd series) as follows:

> "The words 'or otherwise' in law when used as a general phrase following an enumeration of particulars, are commonly interpreted in a restricted sense,

> as referring to such other matters as are kindred to the classes before mentioned, receiving an *ejusdem generis* interpretation."

Can it be said that the holding of the officers "for the purpose of preventing his arrest" makes Gooch guilty under the phrase "and held for ransom or reward or otherwise"? Can this purpose possibly be read to mean that it is kindred or of like nature with ransom or reward? The two elements have nothing in common with each other. They are totally unrelated. If the words "or otherwise" are to be given an all inclusive meaning as contended by the appellee and are to be read to embrace any purpose for which a kidnapped person is held then the words ransom or reward must be held to be meaningless and surplusage in direct contravention of the general principle of construction that all words of a statute must be given effect if possible.

This Court had occasion to pass on the meaning of the words "or otherwise" in the case of *Huguley Manufacturing Co.* v. *Galeton Cotton Mills,* 184 U. S. 290, 46 L. Ed. 546. The first paragraph of the sylabi states the facts:

> 1. No right of appeal from a decree of the circuit court of appeals, which is made final by the act of Congress of March 3, 1891, chap. 517, sec. 6 (26 Stat. at L. 826) is given by the provision of that section that such case may be brought to the United States Supreme Court "by certiorari or otherwise," as, if some other order or writ may be resorted to, it must be *ejusdem generis* with certiorari.

Mr. Chief Justice Fuller delivered the opinion of the Court and in the course of the opinion said:

> "The question before us is whether this appeal was properly granted and can be maintained. In all cases where the decree or judgment of the circuit court of

> appeals is made final by the statute, an appeal does not lie, but any such case may be brought here 'by certiorari or otherwise.' The *latter words* add nothing to our power, for if some other order or writ might be resorted to it would be *ejusdem generis* with certiorari." (Italics ours.)

So it is the contention of the appellant Arthur Gooch in the case at bar that the general words "or otherwise" following the specific words ransom or reward must be read in connection therewith and means acts of a kindred nature that imports a financial gain on the part of the kidnapper. If the words "or otherwise" need be given a meaning that meaning can be found in such acts as extortion, robbery, sale or blackmail, and we believe that Congress had just such acts in mind when the words "or otherwise" were added in the amended statute because these acts could probably be given an *ejusdem generis* construction with ransom or reward.

Judge Sanborn, while a Justice of the 8th Circuit Court of Appeals, had occasion to write exhaustively on this rule in the case of *First National Bank of Annamoose* v. *United States of America,* 206 Fed. 374, 46 L. R. A. (N. S.) 1139. The first two paragraphs of the syllabi read as follows:

> (1) "A penal statute which creates a new crime and prescribes a punishment for it, must *clearly state* the persons and acts denounced. A person who, or an act which, is not by the *express terms or plain meaning of the law,* clearly within the class of persons or within the class of acts it denounces, will not sustain a conviction under it.
>
> (2) "The rule that where general words follow the enumeration of a particular class of persons or of acts, the general words should be construed to apply to persons or acts of the same general nature or class as

those enumerated, is especially applicable to statutes defining crimes and regulating their punishment."

In the course of his opinion Judge Sanborn expressed himself as follows:

"The statute creates and denounces a new offense. A Penal statute which creates a new crime and prescribes the punishment must clearly state the persons or acts denounced. A person who, or any act which, is not by the express terms of the law clearly within the class of persons or within the class of acts it denounces, will not sustain a conviction thereof. One should not be punished for a new offense unless he and his act fall plainly within the class of persons or the class of acts contemplated by the statutes. An act which is not clearly an offense by the expressed will of the legislative department before it was done, may not be lawfully or justly made so by construction after it is committed, either by the interpolation of expressions or by the expunging of some of its words by the judiciary. *Ex post facto* construction is as vicious as *ex post facto* legislation. To determine that an act is within the intention of the statute, its language must authorize us to say so. It would be dangerous indeed to carry the principle that an act which is within the reason or mischief of a statute is within its provisions so far as to punish a crime not enumerated in the statute because it is of equal atrocity, or of *kindred character* with those that are enumerated. (Italics ours.)

"The case must be a strong one indeed which would justify a court in departing from the plain meaning of words in search of an intention which the words themselves did not suggest." (*United States* v. *Wiltberger*, 5 Wheat. 75, 96.)

Following the language of Judge Sanborn's opinion, we find him saying:

"It is only when a penal statute clearly and plainly subjects parties and acts to its denunciation, that they

may be lawfully punished thereunder. *If it is doubtful whether or not it includes them, they ought to be and must be exempt* from criminal prosecution thereunder." (Italics ours.)

A case that we would stress in support of our position is one of much prominence and which is well known to this Court, and was rendered shortly after the enactment of what is known as the White Slave Traffic Act, viz, *Caminetti* v. *United States*, 242 U. S. 470, 61 L. Ed. 442, L. R. A. 1917 F. 514. This case was considered together with the case of *United States* v. *Maury L. Diggs* and *United States* v. *L. T. Hayes.*

The majority opinion was concurred in by five justices, while Justice White, Clarke and McKenna dissented; one Justice not sitting. It was earnestly urged by the appellants in these cases that the White Slave Traffic Act, as was indicated by the title of the act itself, was only intended to cover commercialized vice. Evidence was before the Court that that was in fact the intent of Congress; but the majority opinion held that the language used was so clear and unequivocal that they must give the ordinary construction and meaning of the words so used, and held that the verdicts of the trial court were warranted by the law and the facts. The Court, however, found that the facts disclosed that the defendants had been guilty of transporting in interstate commerce females for the purpose of prostitution, or of acts involving illicit sexual relations. The majority opinion quotes from *United States* v. *Bitty*, 208 U. S. 398, as follows:

> "It may be admitted that in accordance with the familiar rule of *ejusdem generis*, the general purpose referred to by the words 'or any other immoral purpose' must be one of the same general class or kind as the particular purpose of 'prostitution' specified in the clause of the statute."

Justice McKenna, in writing the dissenting opinion, called attention to the case of *Church of Trinity* v. *United States*, 143 U. S. 457, 36 L. Ed. 226. This case came to the Supreme Court of the United States for construction of an act of Congress which made it unlawful for any one in any of these United States, "to prepay transportation, or in any way assist or encourage the importation or migration of any alien or aliens, any foreigner or foreigners, into the United States under contract or agreement, to perform labor or *service of any kind* in the United States, its territories, or in the District of Columbia." The facts in this case disclosed that Trinity Church made a contract with one E. W. Warren, a resident of England, to remove to the City of New York and enter its service as Rector or Pastor. The church was proceeded against under the act, and the circuit court held that it applied, and returned judgment accordingly, 36 Fed. 303. Justice McKenna goes on to say that it would be observed that the language of the statute was very comprehensive, fully as much so as the language of the act under review, having no limitation whatever from the context. The Supreme Court in the *Trinity Church* case reversed the judgment of the circuit court and in an elaborate opinion by Mr. Justice Brewer declared that:

> "It is a familiar rule that a thing may be within the letter of a statute, and yet not within the statute, because not within its spirit or within the intention of its makers."

We here direct specific attention to the phraseology of the act under construction, "to perform labor or service of any kind." If we understand the facts in this case correctly, the contract had with Warren was for his services as a rector of the church. It might be inconceivable altogether to the layman, and perhaps not altogether free from

difficulty to a lawyer, to follow the logic of this opinion, because there appears to be no ambiguity in the language used by the enacting body. This is a case indeed where the thing was within the letter of a statute and yet not within the statute, because not within its spirit or within the intention of its makers.

It may be contended by the government that inasmuch as the words "or otherwise" were added to the words "ransom or reward" in the amended statute in the case at bar, that those words should be given an enlargement of purpose. Congress evidently believed that cases would arise in which the kidnapped person might not be held for ransom or reward but might be held for some similar purpose such as extortion, blackmail, robbery or sale, and the words were added, in our opinion, to include these classes of cases. The rule of *ejusdem generis* applies, however, to the words "or otherwise," regardless of the fact that they were added in the amended statute. If Congress had not so intended, it would have been very easy in passing the amended statute to strike out the words "ransom or reward" altogether, and insert "for any purpose whatsoever."

This Court has passed on this exact point in the case of *United States* v. *Bitty*, 208 U. S. 393, 52 L. Ed., 543, 28 Sup. Ct. Rep. 396.

The statute passed on in that case was a prohibition against the importation of alien women or girls. The first statute prohibited the importation of any alien woman or girl into the United States for the purpose of *prostitution*. The second or amended statute repeated the words and added *"or for any other immoral purpose."* It was contended by the government that the rule of *ejusdem generis* did not apply, but the Court said:

> "Now the addition in the last statute of the words 'or for any other immoral purpose' after the word 'pros-

titution' must have been made for some practical object * * * In forbidding the importation of alien women 'for any other immoral purpose' Congress evidently thought that there were purposes in connection with the importation of alien women which, as in the case of importation for prostitution, were to be deemed immoral. *It may be admitted that, in accordance with the familiar rule of ejusdem generis, the immoral purpose referred to by the words 'any other immoral purpose' must be one of the same general class or kind as the particular purpose for prostitution.*" (Italics ours.)

In that case the accused was charged with the importation of an alien woman for the purpose of concubinage, and it must be agreed that the word concubinage is similar in import to the word prostitution, in fact embraces prostitution.

We may look to the history of the times for interpretation of statutes. The first law enacted by Congress covering the offense of kidnapping was known as the Lindbergh Law, the Act of June 22, 1932, and we can reasonably surmise that when that statute was brought into life it was the intent of Congress to prohibit kidnapping of persons who would be held for ransom or reward. The Act of May 18, 1934, which was enacted after the celebrated Urschel kidnapping case, was enacted to make the penalty for kidnapping more severe. It authorized, where the person kidnapped is harmed, the imposition of the death penalty. If, as we anticipate, it will be urged by counsel for appellee, that the words "or otherwise" are to be all-expansive and not used in a restricted sense, we must assert that the words "ransom or reward" are meaningless, and it would be necessary for the court, in order to agree with such a position, to expunge the words "ransom or reward" from the act. The words "ransom or reward" as used in this

act import some pecuniary consideration, or payment of something of value. In support of this argument, we go to Webster for the definition of the two terms:

Ransom: (1) Release from captivity or bondage by payment. (2) The money paid for the release of a person from capture, bondage or slavery, or for the redemption of goods captured by an enemy.

Reward: (1) Recompense or equivalent return for good or evil done, for kindness, for services, for something lost, and the like; requital.

If ours is a wrong premise here, then it may be urged with logic that the act is sufficiently comprehensive to cover almost any act where parties are transported in interstate commerce, and would even cover an offense within the provisions of the White Slave Traffic Act. For purposes of illustration, assume that a person in the State of Oklahoma, by persuasive letters induced a female from the State of Texas to come to Oklahoma with the intent, upon the part of the male in Oklahoma, to induce the female to commit acts of prostitution. Would he not be guilty under the provisions of the act here under construction? We note that among the terms used in this act are "inveigled" and "decoyed." If we understand correctly, these terms do not imply force or violence. It will not be urged that this act was intended by Congress to repeal the White Slave Traffic Act; but that would be its effect if we are not to apply the rule of *ejusdem generis* to the words "or otherwise" used in the statute. In the *Caminetti* case it was held that the words "or any other immoral purpose" covered only cases of prostitution or similar acts; and we say that these words are more, or at least clearly as comprehensive as the words "or otherwise." Let us not forget that three of the justices in that case held that the words "or any other immoral purpose" were even more restric-

tive, and applied only to commercialized prostitution. We feel that we cannot too urgently emphasize the fact that to give the construction to this act that counsel for appellee must necessarily urge in order to sustain the conviction, would mean to disregard the opinions held in many authorities cited, and to hold quite contrary to the law as established. One must indulge in a great stretch of imagination to hold that when, as in this case, one transports a person from one State to another to prevent arrest, it comes within the scope of this statute. Congress had no such intention in mind.

If we may be permitted to use the vernacular, we would say that Gooch and Nix got hold of a live wire and could not turn loose. No thought entered their minds to hold the officers for ransom or reward, or kindred purpose; but what they had in mind was to prevent arrest. It can not be said that they came within the scope of the statute by holding the officers for ransom or reward, or for the purpose of receiving any pecuniary consideration, or a consideration of value, or for any similar purpose. If these men had kidnapped the officers, and had brought them into Oklahoma for the purpose of extortion, or for the purpose of robbing them, we believe it could, under such circumstances, have been well held that they committed an offense under the Act of May 18, 1934.

We earnestly urge consideration of the many other authorities hereafter cited for the reason that they are, we believe, directly in point. We read from the case of *Fasulo* v. *United States*, 272 U. S. 620, 629:

> "In *United States* v. *Chase*, 135 U. S. 255, the indictment was under Section 1 of the Act of July 12, 1876, c. 186, 19 Stat. 90, declaring 'every book * * * pamphlet, picture, paper, writing, *print* or other publication of an indecent character' to be unmailable, and making their deposit in the mails an offense. The

question was, whether to send an obscene letter by mail violated that section. The court held that the letter was not a writing within the meaning of the statute. It said (p. 261):

"We recognize the value of the rule of construing statutes with reference to the evil they were designed to suppress as an important aid in ascertaining the meaning of language in them *which is ambiguous, and equally susceptible of* conflicting construction. But this court has *repeatedly held that this rule does not* apply to instances which are not embraced in the language employed in the statute, *or implied from a fair interpretation* of its context, even though they may involve the same mischief which the statute was designed to suppress." (Italics ours.)

In the case of *United States* v. *Sheldon*, 2 Wheat. 119-120, 4 L. Ed. 199, a statute was under consideration that read in part as follows:

"That if any citizen of the United States or person inhabiting same shall transport, or attempt to transport, overland or otherwise, in any wagon, cart, sleigh, boat *or otherwise* naval or military stores, arms or munitions of war, or any article of provision from the United States to Canada, etc., the wagon, cart, sleigh, boat or the thing by which the said articles are transported or attempted to be transported, together with the articles themselves, shall be forfeited, and the person in aid of or privy to the same shall forfeit to the United States a sum equal in value to the wagon, etc., or thing by which the said articles were transported, and shall moreover be considered as guilty of a misdemeanor and liable to fine and imprisonment."

The Court unanimously held that live fat oxen were articles of provision and munitions of war within the intent of the statute quoted. The proof disclosed that the oxen were driven overland from the United States into Canada. It was contended by the Attorney General of the United

States that the words "or otherwise" contained in the phrase "in any wagon, cart, sleigh, boat *or otherwise*" were sufficient to bring the act of driving the cattle overland into Canada within the statute but this Court said:

> "It may be admitted that the mischief is the same whether the enemy be supplied with provisions in the one way or the other; but this affords no good reason for construing the penal statute by equity so as to extend it to cases not within the correct and ordinary meaning of the expression of the law."
>
> "If it were impossible to construe the words 'or otherwise' except in the way contended for on the part of the United States, there would be some reason for giving that interpretation to them. But it has been shown that this is not the case."

While we believe unquestionably that it was the intent of Congress by the statute under construction in that case to prevent the furnishing of provisions and munitions of war to the enemy, under such circumstances as exist in that case, the Court had to give such construction to the statute as was permitted by the rule of *ejusdem generis*. The cattle, the provisions of war, were in fact transported when they were driven overland. At least they were moved from one place to another, which we would construe as a transportation. The Court said that the mischief was the same, but that fact did not afford any reason for construing this penal statute by equity. To the same effect see *United Sates* v. *Bevans*, 3 Wheat. 336, 390.

The 9th Circuit in the case of *Koth* v. *United States*, 16 F. (2d) 59, had occasion to apply the rule in passing on the word "place" when preceded by the words "in room, house, building, boat, structure or vehicle." The defendant in that case had been indicted for keeping, maintaining and operating a still on his premises, but not located in

any house or building. In the course of its opinion the court expressed itself as follows:

> "It is clear that the word 'place' does not refer to a city, town or township, and must be determined in the connection of its use and under the rule of *ejusdem generis*. The word 'place' in this section, following the special words 'room, house, building, boat, vehicle or structure', is limited to things of the same kind, something with walls and defining tangible limits, as described by the special words."

In *Griffith* v. *United States,* 261 Fed. 159 (C. C. A.), a defendant was charged with transportation of a female "for the purpose of prostitution and debauchery and for other immoral purposes." The court instructed the jury in part as follows:

> "I charge you that in this case there is no evidence tending to show that this defendant caused this girl, Katharine, to be transported for the purpose of debauchery or to become a prostitute, but only under that clause 'for some immoral purpose'."

The defendant urged that under this instruction the indictment was defective in not alleging the precise nature of said immoral purpose, and that the judge authorized the jury to find the defendant guilty if the intended immoral purpose of the transportation were other than sexual immorality.

The court, at page 160 of the opinion, delivered itself as follows:

> "A state of facts is easily conceivable where such a charge might have been harmful; for instance, if there was evidence that one of the immoral purposes of the transportation was the perpetration of an offense as wholly unrelated to debauchery and prostitution as is, say, robbery or blackmail; in such case it might be inferred from the charge that a conviction might be

had if the jury found such other immoral purpose to have been the purpose of the transportation. Without deciding the proposition, it may be said to be at least doubtful whether the statute was intended to cover transportation for immoralities other than those of a sexual nature."

We have noted that this Court has decided this question in *Caminetti* v. *United States, supra.*

In *Pa. Steel Co.* v. *Washington and Berkeley,* 194 Fed. 1011, 1017, a contract was under construction that read in part as follows: "by reason of the omission or negligence of this defendant's agents or its workmen *or otherwise.*" The court proceeded to say:

"Do these words 'or otherwise' broaden the scope of the steel company's liability to include all acts of negligence and omission on the part of the bridge company, its agents and employees that might have been committed by it or them before the steel company's contract, or must they be limited by the rule of *ejusdem generis* requiring that in the construction of statutes, contracts and other instruments, where enumeration of specific things is followed by a general word or phrase, the latter is held to refer to things of the same kind as those specified? This rule is well recognized and established."

Then follows a long list of authorities. The court continued as follows:

"It has been very recently applied by the Circuit Court of Appeals for this circuit in *Hickman* v. *Cabot,* 183 Fed. 747, where a clause 'if by reason of fire, explosion or other cause' in a contract was held not to authorize the shutting down of his carbon factory by a contractor for natural gas to be used therein for the cause that its operation must be at great loss, but must be restricted to causes similar in character to fire and explosion. In view of the principles so recently enun-

> ciated in this case, and by this court, whose opinions are binding upon me, I feel compelled to restrict the words 'or otherwise' used here in this contract to acts of negligence of the steel company itself, its agents, its workmen or ones of like character arising in its carrying out its contract in the erection of the superstructure."

See also *Mo. Pac. Ry. Co.* v. *United States,* 211 Fed. 893 (C. C. A. 8th).

In *Lowenstein* v. *Fidelity & Casualty Co.,* 88 Fed. 474, the first and third paragraphs of the syllabi set out the facts and the law applicable in construing the words "or otherwise" used as general term preceded by specific terms.

> (1) A clause declaring that the insurance does not cover injuries or death "resulting from poison or anything accidentally *or otherwise* taken, administered, absorbed or inhaled" does not exempt the insurer from liability for death caused by involuntary and unconscious inhalation of illuminating gas, accidentally taken while asleep.
>
> (2) The words "or otherwise" as used in the above provision do not qualify the act of inhaling but are used in connection with the preceding word "accidentally" and mean an injury of a *kindred character.* (Italics ours.)

See also

Duffy v. *Central R. R.,* 268 U. S. 55, 63.
City of Salem, 31 Fed. 616-618.

It will be noticed that the above cases are civil in nature. How much more reason for the rule being applied to such a statute as is now before this court. The statute under construction is highly penal in its nature. A person's life may be exacted under its terms and it is the contention of the defendant that before this extreme penalty may be in-

curred under its provisions the act complained of must come clearly and plainly within its provisions; and in case there is any doubt as to whether or not the defendant's act is embraced within the statute, then that doubt must be resolved in his favor.

The statute provides that the "kidnapped * * * person must be held for ransom or reward or otherwise." Construing the words "or otherwise" according to the settled rules of construction as cited under the authorities above, the kidnapped person must be held for "ransom, reward," or for some similar purpose of a kindred nature such as robbery, extortion, blackmail or sale; for a reason that imports pecuniary gain on the part of the kidnapper.

The Montana Supreme Court had occasion in *Forrester et al.* v. *Boston & Me. Consol. Copper & Silver Min. Co. et al.*, 21 Mont. 544, 55 Pac. 229, 235, to construe the words "or otherwise," when preceded by specific words denoting pecuniary consideration.

That part of the act applicable to the case at bar provided:

> "If on canvassing the votes it shall be found that at least two-thirds of all the shares of the capital stock of such corporation have been voting in favor of selling, leasing, mortgaging *or otherwise disposing* of a given piece or the whole of said mining property. * * * (Italics ours.)

One of the questions passed on by the court was whether or not the words "or otherwise disposing of" were broad enough to cover an exchange of the corporation's stock for that of another corporation. In holding that these words must be restricted by the words that preceded them the court said:

> "Manifestly, the transfer proposed lacks an element necessary to constitute a sale, namely, a pecuniary

consideration. To constitute a sale, there must, as a general rule, be a consideration in money. The proposed transaction is, at best, merely an exchange; and the defendants' claim that the expression 'or otherwise dispose of,' used in section 492, operates to confer upon the corporation the power to exchange as well as to sell the entire property of the corporation without the consent of every stockholder therein. We do not think the general enumeration of the powers by the terms 'sell, lease, mortgage, or otherwise dispose of' operates either to confer upon mining corporations the power to exchange, or as a recognition of it as already possessed by other industrial corporations. The words 'or otherwise dispose of' *are not sufficiently* vigorous to justify the construction urged by defendants; and in so far as they may seem sufficiently significant to require their application to powers other than those specifically named, they may be satisfied by reference to the right to assign for the benefit of creditors, to hypothecate, or pledge, or possibly even the right to remove or destroy, the mills, smelters, concentrators, or reduction works, rather than by allowing them, by mere implication, to create or recognize a power *radically different from those particularly specified.* It must be admitted that the sale of the assets and the distribution of the proceeds is vitally different from the enforced exchange of those assets for the capital stock of a foreign corporation; * * *'' (Italics ours.)

The words "ransom or reward" are totally unrelated and foreign to the purpose charged to the defendant in this case. It would be difficult to imagine a purpose further removed from the statute than "to prevent an arrest."

It is an elementary rule of construction, as pointed out by Judge Sanborn, in *First National Bank of Annamoose* v. *United States, supra,* that all the words of a statute must be given effect if possible.

In the case of the *City of Salem,* 31 Fed. 616, 618 a statute was under consideration which used the words "or others" following the specific words "mechanics, tradesmen." The court in construing the meaning of the words "or others" said:

> "And first, this statute gives a lien only to mechanics, tradesmen, *or others* for labor or materials. The phrase "or others" is a general one, immediately following the enumeration of particular cases,—"mechanics" and "tradesmen",—and is therefore applicable only to other persons in the same category or calling. The statute ought not to be construed to include *every* person who furnishes material or performs labor on a vessel, because, if that was the intention of the legislature, it was very easy to have said so."

Perhaps the most recent decision of this Court illustrative of the points now before the Court is the case of *McBoyle* v. *United States,* 283 U. S. 25. In that case the defendant McBoyle was indicted under the National Motor Vehicle Theft Act for transporting an airplane from Ottawa, Illinois, to Guymon, Oklahoma, knowing said airplane to have been stolen. The defendant, McBoyle, was convicted in the District Court and his conviction was affirmed by the Circuit Court of Appeals for the Tenth Circuit. The case came to this Court by certiorari and was reversed. The syllabus sets out the facts and is as follows:

> "The National Motor Vehicle Theft Act, U. S. C. Title 18, Sec. 408 which punishes whoever transports, or causes to be transported in interstate or foreign commerce a motor vehicle knowing it to have been stolen, and which defines 'motor vehicle' as including 'an automobile, automobile truck, automobile wagon, motor cycle or any other self propelled vehicle not designed for running on rails' does not apply to aircraft."

Mr. Justice Holmes wrote the opinion of the Court and in the course of his opinion he said:

> "The question is the meaning of the word 'vehicle' in the phrase 'any other self-propelled vehicle not designed for running on rails.' No doubt etymologically it is possible to use the word to signify a conveyance working on land, water or air. * * * But in everyday speech 'vehicle' calls up the picture of a thing moving on land. * * * So here the phrase under discussion calls up the *popular picture*. For after including automobile truck, automobile wagon and motor cycle, the words 'any other self propelled vehicle not designed for running on rails' still indicate that a vehicle in the popular sense, that is a vehicle running on land, *is the theme*. It is a vehicle that runs, not something, not commonly called a vehicle that flies." (Italics ours.)

Applying the reasoning of the learned justice in the above case to the case at bar there is no question but that the word "kidnap" has a definitely accepted popular meaning. The very word itself imports holding for ransom or reward for release of the kidnapped person. Justice Holmes in the *McBoyle* case went on to say:

> "Although it is not likely that a criminal will carefully consider the text of the law before he murders or steals, it is reasonable that a fair warning should be given to the world in language that the common world will understand, of what the law intends to do if a certain line is passed. To make the warning fair, so far as possible the line should be clear. When a rule of conduct is laid down in words that evoke in the common mind only the picture of vehicles moving on land, the statute should not be extended to aircraft, simply because it may seem to us that a similar policy applies or upon the speculation that, if the legislature had thought of it, very likely broader words would have been used."

So we say in the case at bar that it would never have occurred to the common world to use the words of Justice Holmes, that the act of Gooch and Nix in transporting the officers across the state line there to be released immediately was a violation of the "Lindbergh Law" or that a man's life could be forfeited for such an act. This is the only instance that we know of that a person has been prosecuted and convicted under this act where the kidnapped person was not held for ransom or reward or for a similar purpose. In the very recent case of *People* v. *Tanner*, 44 Pac. (2d) 324, 332, the Supreme Court of California had occasion to remark:

> "Gain has always been the motive of kidnappers."

And we believe that that is what Congress had in mind and all that it had in mind when this act was passed and that it was not the intention of Congress to make it possible to hang a man for such an offense as charged here.

As was well said by this Court in the case of *U. S.* v. *Brewer*, 139 U. S. 278, 288:

> "Laws which create crime ought to be so explicit that all men subject to their penalties may know what acts to avoid. * * * Before a man can be punished, his case must be *plainly* and *unmistakably* within the statute." (Italics ours.)

Counsel for the government in their brief filed in the Circuit Court of Appeals set forth the committee reports in Congress relative to the kidnapping law under construction in the case at bar and cite authorities to the effect that the courts are permitted to consider such reports in ascertaining the intentions of Congress. The reports of committees referred to in the government's brief are taken from their brief in the Circuit Court of Appeals and are as follows:

"On page 37 of Crime Laws of the 73rd Congress, we find Report No. 534 from the Judiciary Committee of the

United States Senate accompanying the amendment to the kidnapping statute in question. The report by Mr. Stephens of the Committee is as follows:

"Mr. Stephens, from the Committee on the Judiciary, submitted the following

Report.

(To Accompany S. 2252.)

"The Committee on the Judiciary, having had under consideration the bill (S. 2252) to amend the act forbidding the transportation of kidnapped persons in interstate commerce, reports the same favorably to the Senate and recommends that the bill do pass.

"The purpose and need of this legislation are set out in the following memorandum from the Department of Justice:

"S. 2252; H. R. 6918: This is a bill to amend the act forbidding the transportation of kidnapped persons in interstate commerce—act of June 22, 1932 (U. S. C., ch. 271, title 18, Sec. 408A), commonly known as the 'Lindbergh Act'. This amendment adds thereto the word 'otherwise' so that the act as amended reads:

"'Whoever shall knowingly transport * * * any person who shall have been unlawfully seized * * * and held for ransom or reward or otherwise shall, upon conviction, be punished * * *.' The object of the addition of the word 'otherwise' is to extend the jurisdiction of this act to persons who have been kidnapped and held, not only for reward, but for any other reason. * * *

"I believe that this is a sound amendment which will clear up border line cases, justifying federal investigation in most of such cases and assuring the validity of federal prosecution in numerous instances in which such prosecutions would be questionable under the present form of this act."

The report of the Judiciary Committee of the lower house of Congress, being Report No. 1457 on pages 38 and 39 of Crime Laws of the 73rd Congress, used the following language:

> "Mr. Sumners of Texas, from the Committee of the Judiciary submitted the following
>
> Report.
>
> (To Accompany S. 2252.)
>
> "The Committee on the Judiciary, to whom was referred the bill, S. 2252, to amend the act forbidding the transportation of kidnapped persons in interstate commerce, after consideration, report the same favorably to the House with amendments with the recommendation that the bill as amended do pass." * * *
>
> "This bill, as amended, proposes three changes in the act known as the 'Federal Kidnapping Act'. First, it is proposed to add the words 'or otherwise, except in the case of a minor, by a parent thereof'. This will extend federal jurisdiction under the act to persons who have been kidnapped and held, not only for reward, but, for any other reason, except that a kidnapping by a parent of his child is specifically exempted."

There is no question but that courts from time to time and under certain conditions have referred to the committee reports as an aid in construing certain statutes where the language used was so uncertain and obscure as to necessitate this measure. We wish to call to this Court's attention the case of *Caminetti* v. *United States*, 242 U. S. 470 as an authority on this proposition. In this case it was shown by the committee reports, the title of the act itself and even by an opinion of the Attorney General that the White Slave Traffic Act was intended to cover only cases of commercialized vice but the Court refused to consider them. The first paragraph of the syllabus reads as follows:

> 1. The name given to a congressional enactment by way of designation or description in the act or the re-

port of the committee accompanying the introduction of the bill into the House of Representatives cannot change the plain implication of the words of the statute.

Mr. Justice Day delivered the opinion of the Court and in the course of his opinion said:

> "Still the name given to an act by way of designation or description, or the report which accompanies it, cannot change the plain import of its words. If the words are plain, they give meaning to the act, and it is neither the duty nor the privilege of the courts to enter speculative fields in search of a different meaning. Reports to Congress accompanying the introduction of proposed laws may aid the courts in reaching the true meaning of the legislature in cases of doubtful interpretation (citations). But as we have already said, and it has been so often affirmed as to become a recognized rule, when words are free from doubt they must be taken as the final expression of the legislative intent, and are not to be added to or subtracted from by considerations drawn from titles or designating names or reports *accompanying their introduction*, or from any extraneous source. In other words, the language being plain, and not leading to absurd or wholly impracticable consequences, it is the sole evidence of the ultimate legislative intent." (Italics ours.)

And in the case of *Mackenzie* v. *Hare*, 239 U. S. 299, 308; 60 L. Ed. 297, 300, this Court held to the same effect. Mr. Justice McKenna delivered the opinion in the course of which he said:

> "Whatever was said in the debates on the bill or in the reports concerning it, preceding its enactment or during its enactment, must give way to its language; or, rather, all the reasons that induced its enactment and all of its purposes must be supposed to be satisfied and expressed by its words, and it makes no difference that in discussion some may have been given more

> prominence than others, seemed more urgent and insistent than others, presented the mischief intended to be remedied more conspicuously than others."

The White Slave Act makes it an offense to transport in interstate commerce a female for the purpose of "prostitution, debauchery or for any other immoral purpose" and the question arose in the *Caminetti* case as to the meaning of the words "or for any other immoral purpose." The Court in the *Caminetti* case, *supra,* held that the words "or for any other immoral purpose" had been defined in the case of *United States* v. *Bitty,* 208 U. S. 393, and that:

> "this definition of an immoral purpose was given prior to the enactment of the act now under consideration, and must be presumed to have been known to Congress when it enacted the law here involved."

The same rule was invoked in the case of *E. M. Asbury et al.* v. *Commissioners of the Town of Albemarle,* 78 S. E. 146, 44 L. R. A. (n. s.) 1189, where the Supreme Court of North Carolina said:

> "Another rule applicable to the construction of statutes is, that, when they make use of words of definite and well-known sense in the law, they are to be received and expounded in the same sense in the statute."

So in the case at bar it is the contention of the appellant that as the words "or otherwise" following a specific enumeration have been held by the Supreme Court of the United States, by the Circuit Court of Appeals and by the District Courts of the United States, by the Supreme Courts of most states as set forth in the brief of appellant, to mean acts of a similar nature or of a kindred character Congress must be presumed to have known the judicial definition of these words and to have used them accordingly.

Nor do we agree with the sweeping construction of the committee reports placed on them by Counsel for the Government. We set out the applicable parts:

> "* * * The object of the addition of the word 'otherwise' is to extend the jurisdiction of this act to persons who have been kidnapped and held not only for reward, but for any other reason * * * I believe that this is a sound amendment which *will clear up border line cases,* justifying federal investigation in most of such cases and assuring the validity of federal prosecution in *numerous instances* in which such prosecutions would be questionable under the present form of this act."

Why were the words "border line cases" used in the report if the committee intended the words "or otherwise" to embrace every purpose? If these words are to be used in their unrestricted sense there could be no "border line cases" because the words "or otherwise" unrestricted by the specific words "ransom or reward" would include *all* cases. This contention and construction is substantiated by the words *"numerous instances"* for the same reason set out above. If these general words are to include all purposes for which a kidnapped person is held then the validity of federal prosecutions is assured in *all instances.* It would seem that the committee realized that cases would arise in which the kidnapped person was held not precisely for ransom or reward but for some related purpose and it was their intention to cover such instances by the use of the words "or otherwise." We believe that the committee in using the words "not only for reward but for any other reason" meant any other reason similar to ransom or reward and the latter part of their report indicates that such was their intention. If this were not true it would have been very easy to strike out the words "ransom or reward" and to have substituted the words "for any purpose what-

soever" in their stead, but these words were left intact and in our opinion govern the meaning and limit the scope of the general words "or otherwise."

On the same day that the amended kidnapping statute now before this Court for construction was approved the following statute was also approved (May 18, 1934, Title 18, U. S. C., Sec. 408d):

> "*Whoever, with intent to extort from any person, firm, association, or corporation any money or other thing of value,* shall transmit in interstate commerce, *by any means whatsoever,* any threat (1) to injure the person, property, or reputation of any person, or the reputation of a deceased person, or (2) to injure the person, property, or reputation of any person, or (3) to accuse any person of a crime, or (4) *containing any demand or request for a ransom or reward for* the release of any kidnapped person, shall upon conviction, etc., * * *."

The above act and the amended kidnapping act were both before Congress at the same time and were both approved on the same day (May 18, 1934).

> "It is a well established rule that in the construction of a particular statute, or in the interpretation of its provisions, all statutes relating to the same subject, or having the same general purpose, should be read in connection with it, as together constituting one law, although they were enacted at different times and contain no reference to one another" 59 C. J. 1043.

> "The rule that statutes in *pari materia* should be construed together applies with peculiar force to statutes passed at the same session of the legislature, especially where they are passed or approved *on the same day*" * * * 59 C. J., p. 1053.

The above act when read in connection with the kidnapping act goes far in shedding light on the meaning of the

latter. It will be seen that the applicable parts of this act, as italicized above contemplate a kidnapping in its true sense and there is no indication of punishing an act such as is charged to the defendant which in reality is nothing more nor less than simple false imprisonment punishable under the state laws.

In view of the attitude taken by counsel for the Government relative to the meaning of the committee reports accompanying the amended kidnapping act it is interesting to scan the report that accompanied the act set out above (Page 34 of Crime Laws of 73rd Congress.)

"Mr. Stephens from the Committee on the Judiciary, submitted the following

Report.

(To Accompany S. 2249.)

"The Committee on the Judiciary having had under consideration the bill (S. 2249) applying the powers of the Federal Government under the commerce clause of the Constitution, to extortion by means of *telephone, telegraph, radio, oral message or otherwise,* reports the same favorably to the Senate and recommends that the bill do pass.

"The purpose and need of this legislation are set out in the following memorandum from the Department of Justice.

"S. 2249 H. R. 6915, a bill applying the powers of the Federal Government under the commerce clause of the Constitution, to extortion by means of telephone, telegraph, radio, oral message *or otherwise.*

"This bill supplements the Patterson Act (Act of July 8, 1932, c. 464; Sec. 1 U. S. C. Title, 18 Sec. 338a) which makes it a Federal criminal offense to transmit threats through the mails with intent to extort any money or other thing of value. Realizing the effectiveness of the Federal Government's investigating

agencies criminals are purposely refraining from sending extortion letters through the mails, using instead the telephone, telegraph, radio and other means of conveyance. This proposed bill is virtually an amendment of the Patterson Act, based on the Federal power over interstate commerce, to prevent this evasion of that act."

It will be seen that the bill as originally drawn forbade the transmission in interstate commerce of extortion notes, etc., by means of *telephone, telegraph, radio, oral message or otherwise.* And the title of the act finally passed uses these words. Now on page 8896, Congressional Record issue of May 11, 1934, we find the following language in the statement of the managers on the part of the House relative to said bill:

"* * * The Senate bill provided that the penalties of the act shall apply to anyone who 'shall transmit an extortion message in interstate commerce by *telephone, telegraph, radio,* or *oral message,* or by any other means whatsoever." The House *STRUCK OUT THE WORDS OF LIMITATION* to make the act apply to 'anyone who shall transmit such threat in interstate commerce *BY ANY MEANS WHATSOEVER."* The Senate receded. * * *"

So it would appear that Congress was fully aware of the construction that would be placed on the words "or otherwise" in the kidnapping law for the reason that in the above act they struck out these words and substituted in their place *"by any means whatsoever"* and it is the contention of the appellant that had Congress intended to make an act similar to the one now before this Court a violation of the kidnapping statute it would not have used the words "ransom, reward or otherwise" but would have used instead the words *"and held for any purpose whatsoever"* and the fact that under parallel circumstances as they

existed in the extortion statute set out above this precise thing was done adds weight to our contention. The great majority of members in both the Senate and House are attorneys by profession and it is presumed that they were familiar with the construction that has been placed on the words "or otherwise" by the courts, and that these words were used accordingly.

There was apparently very little discussion of the amended kidnapping law when it was on the floors of Congress. The following citations are all that we have been able to find where the act is mentioned, in the Congressional Record.

Issue of May the 5th, 1934, pages 8344 et seq.;
" " " " 11th, 1934, pages 8895 et seq.;
" " " " 14th, 1934, pages 9031 et seq.;
" " " " 15th, 1934, pages 9159 et seq.;

In the issue of May 11th, 1934, page 8895, the managers of the House take up the amendments proposed one by one and discuss them but the addition of the words "or otherwise" drew no comment one way or the other. It is not even mentioned. In discussing the first amendment which includes the addition of the words "or otherwise" the statement did say:

> * * * All the amendments of the House are agreed to. The first amendment excludes from the operation of the act forbidding the transportation of kidnapped persons in interstate commerce the technical case of a minor "kidnapped" by a parent thereof * * *

Contention of the Government that the exception in the statute specifically exempting a parent from the provisions of its terms explains the purpose of the statute we believe to be without merit. Counsel apparently are contending

that it would be impossible for one spouse to kidnap the child and to hold it from the other spouse for the purposes set forth in the statute as those purposes are construed by the appellant in this case. We believe that Congress realized that cases might arise in which this exact circumstance existed but it felt that filial affection would prevent any harm to the kidnapped child if the demands were not met by the other spouse, hence the exception.

> "• • • While an exception may properly be considered in ascertaining the true meaning of a statute, it cannot put into a previous provision something which was not there before." 59 C. J. 1092.
>
> "An exception relates only to that to which it is made, and can exclude nothing which was not contained therein before the exception was made." *Batcheller-Durkee* v. *Batcheller*, 97 A. 378, 39 R. I. 45, 61, L. R. A. 1916E, 545.

Then too:

> "The offense of kidnapping a child cannot be committed by the person having the right to the custody of such child such as the father, or the mother or the guardian of a child." 35 C. J. 907.

The above rule would not apply if one spouse had been given the custody of the child by judicial decree to the exclusion of the other. And under the authorities above we contend that the exception cannot place something in the act here involved not contained therein before the exception was made. Without the exception a parent could have been punished for kidnapping his child and holding the child for ransom, reward or for a similar purpose. The exception merely exempted the parent from the terms of the statute. Certainly it cannot be said to have broadened the scope of the statute itself.

Counsel for the Government may urge that even though this Court restricts the meaning of the words "or other-

wise" to include only acts related to "ransom or reward" that the defendant is guilty because he received a "reward" by preventing his arrest.

The word "reward" has a definitely accepted meaning and the rule is elementary that courts will not search for hidden or obscure meanings in a word that is commonplace and in ordinary use. In the case of *Kircher* v. *Murray*, 54 Fed. 617, 624, the word reward has been defined as:

> "A sum paid for the performance of some specific act to some person or persons."

May it not be logically urged that that was the definition Congress had in mind when this word was used? Then too the word reward is associated with the word ransom in the statute and if there is any doubt concerning its meaning as used in the statute the word ransom may be looked to as an aid.

Before concluding this brief we wish to earnestly commend to this Court's attention the fact that the indictment alleges that the appellant Gooch kidnapped and held the officers for the purpose of preventing his arrest in the State of Texas. After the men crossed the State line could it be logically urged that Gooch was still holding the officers to prevent his arrest in the State of Texas? They were in Oklahoma at that time and of course it was necessary that Gooch carry the officers out of Texas before the offense was completed. Yet when he entered Oklahoma with the officers, certainly he could not be said to be holding them at that time in order to prevent his arrest in the State of Texas because they were not in Texas. The moment he entered Oklahoma he may have been holding the officers for some purpose but certainly he could not be holding them for the purpose of preventing his arrest at Paris in the State of Texas. The statute provides that whoever transports any person who has been unlawfully seized, kidnapped, etc., in

interstate or foreign commerce *and holds* them for ransom or reward or otherwise shall be punished, etc. Conceding the kidnapping, and transportation into Oklahoma, how can it logically be urged that after they reached Oklahoma the officers were held to prevent Gooch's arrest at Paris in the State of Texas? As we read the statute the kidnapped person must be held in the State into which he is transported for one of the purposes set out in the statute. The indictment in this case does not allege that the officers were held for any purpose whatsoever after reaching Oklahoma.

Conclusion.

We earnestly contend that the act charged in this case is not a violation of that statute under which it is drawn and that the words "or otherwise" have been judicially defined and interpreted by this Court prior to the enactment of this statute and that such definition and interpretation must be presumed to have been known to Congress when this act was passed and that to make this statute cover such an offense as charged here it would be necessary to give it a very liberal construction in direct contravention of the principle of law that penal laws must be construed strictly in favor of the accused and if there is any doubt, the doubt must be resolved in his favor.

We respectfully submit that the two questions certified to this Court by the Tenth Circuit Court of Appeals should be answered in the negative.

Respectively submitted,

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No. 559

In the Supreme Court of the United States

OCTOBER TERM, 1935

ARTHUR GOOCH

v.

THE UNITED STATES OF AMERICA

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE UNITED STATES

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BRIEF FOR THE UNITED STATES

OPINIONS BELOW

No opinion was rendered by the District Court and none has been rendered by the Circuit Court of Appeals.

JURISDICTION

The certificate of the Circuit Court of Appeals was filed in this Court on October 29, 1935. The jurisdiction of this Court is conferred by Section 239 of the Judicial Code as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

The questions certified are the following:

1. Is holding an officer to avoid arrest within the meaning of the phrase, "held for ransom or reward

or otherwise", in the act of June 22, 1932, as amended May 18, 1934 (48 St. 781), 18 U. S. C. A. 408a?

2. Is it an offense under Section 408a, *supra*, to kidnap and transport a person in interstate commerce for the purpose of preventing the arrest of the kidnaper?

STATUTE INVOLVED

The Act of June 22, 1932, c. 271, Sec. 1, as amended May 18, 1934, c. 301, 48 Stat. 781 (18 U. S. C., Sec. 408a), the so-called Federal Kidnaping Act, so far as here involved reads as follows:

> Whoever shall knowingly transport or cause to be transported, or aid or abet in transporting, in interstate or foreign commerce, any person who shall have been unlawfully seized, confined, inveigled, decoyed, kidnaped, abducted, or carried away by any means whatsoever and held for ransom or reward *or otherwise, except, in the case of a minor, by a parent thereof,* shall, upon conviction, be punished (1) by death if the verdict of the jury shall so recommend, provided that the sentence of death shall not be imposed by the court if, prior to its imposition, the kidnaped person has been liberated unharmed, or (2) if the death penalty shall not apply nor be imposed the convicted person shall be punished by imprisonment in the penitentiary for such term of years as the court in its discretion shall determine: *Provided,* That the failure to release such person within seven days after he shall have

> been unlawfully seized, confined, inveigled, decoyed, kidnaped, abducted, or carried away shall create a presumption that such person has been transported in interstate or foreign commerce, but such presumption shall not be conclusive. (Italics supplied.)

The italicized words were not in the original Act of 1932 but were among the amendments added by the 1934 Act. The original Federal Kidnaping Act of 1932 and the amending Act of 1934 are printed in the Appendix, *infra*, p. 20.

STATEMENT

The facts as set forth in the certificate are as follows:

Gooch was convicted and sentenced to be hanged under an indictment charging that he, with one Nix, kidnaped two officers at Paris, Texas, "for the purpose of preventing his (Gooch's) arrest by the said peace officers in the State of Texas", and transported them in interstate commerce from Paris, Texas, to Pushmataha County, Oklahoma, and at the time of the kidnaping did bodily harm and injury to one of the officers, from which bodily harm the officer was suffering at the time of his liberation by Gooch and Nix in Oklahoma.

The proof supports the charge. It established these facts: Gooch and Nix, while heavily armed, were accosted by the officers at Paris, Texas. To avoid arrest, Gooch and Nix resisted and disarmed the officers, unlawfully seized and kidnaped them and transported them by automobile from Texas

to Oklahoma, and liberated them in the latter State. During the time Gooch and Nix were kidnaping the officers they inflicted serious bodily injury upon one of the officers, from which injury he was suffering at the time of such liberation in the State of Oklahoma.

SUMMARY OF ARGUMENT

The language of the statute requires an affirmative answer to the questions certified. The phrase "held for ransom or reward" was amended two years after the enactment of the statute by the addition of the phrase "or otherwise, except, in the case of a minor, by a parent thereof." The amended language indicates an intention to include cases of kidnaping and detention not only for pecuniary gain but for other benefit or advantage. The word "otherwise" carries the meaning of dissimilarity, and hence precludes any narrow application of the rule of *ejusdem generis*. Numerous courts have so held in construing the words "or otherwise." The specific exception in the case of the kidnaping of a minor child by its parent shows that such cases would be within the scope of the statute were it not for the exception.

The legislative history of the statute confirms its construction as including cases of kidnaping to prevent arrest. When originally introduced in 1932 the bill contained the phrase "held for ransom or reward, or held for any other unlawful purpose." The latter part of this phrase was stricken out be-

cause of reluctance to include cases of kidnaping of a child by its parent. Two years later the statute was broadened to its present form, indicating an intention to revert to the scope of the original bill while making provision for excepting the kind of case which Congress had been unwilling to include. The Committee Reports reinforce this conclusion.

The rule of *ejusdem generis* will not be narrowly applied where such application would defeat the meaning of the statute as shown by its language and its legislative history. But even if the strictest rules of construction are applied, it is submitted that the kidnaping of an arresting officer to prevent arrest is a kidnaping "for ransom or reward or otherwise", the substantial benefit to the kidnaper constituting his reward or recompense akin hereto.

ARGUMENT

I

THE LANGUAGE OF THE STATUTE MANIFESTS A CLEAR LEGISLATIVE INTENT THAT IT SHALL APPLY TO EVERY KIDNAPING WHERE THE VICTIM IS HELD FOR RANSOM OR REWARD OR PECUNIARY PROFIT OR FOR ANY OTHER RECOMPENSE, BENEFIT OR ADVANTAGE, EXCEPT ONLY IN THE CASE OF A MINOR KIDNAPED OR HELD BY THE PARENT THEREOF

Both questions certified raise solely an issue of statutory construction, the second question in more general terms than the first. That issue is whether kidnaping and detention for the purpose of pre-

venting arrest is included within the statute as amended. Specifically the issue involves the scope of the amendatory phrase "or otherwise, except, in the case of a minor, by a parent thereof", which was added, after an interval of two years, to the phrase "held for ransom or reward."

The appellant has contended that the statute must be construed as applying only where the purpose of the kidnaping and detention is to secure some pecuniary gain; he contends for a strict construction of the statute and for an extreme application of the rule of *ejusdem generis*. The Government in the case at bar does not maintain that the amendatory language of the statute must be construed to include every class or kind of kidnaping where interstate commerce is involved. It is unnecessary in the case at bar to urge so broad a construction. The Government maintains that in any event the statute must be construed to apply to kidnaping and detention for the purpose of securing any recompense, benefit or advantage, whether pecuniary or not. No narrower construction, it is submitted, is consonant with the language of the Act as amended, its legislative history and the purposes for which it was enacted.

As amended, the Act specifies what is probably the most common motive actuating the crime of kidnaping, namely, ransom or reward, and adds the words set forth above. The phrase "or otherwise" was aptly chosen to include the various types

of other personal advantage without enumerating them specifically. The phrase "or otherwise," it should be noted, carries a distinctly stronger connotation than such phrases as "or other purpose". The former carries the connotation of additional and dissimilar; the latter, of additional and similar. The word "otherwise" is defined in Webster's International Dictionary as "in a different manner; in another way, or in other ways; contrarily." This meaning has been recognized in numerous decisions which regard the phrase "or otherwise" as precluding any narrow application of the rule of *ejusdem generis*. A collection of such decisions is printed in the Appendix, *infra*, pp. 22–25.

Since the meaning of the amendatory phrase "or otherwise" carries the concept of dissimilarity, its force would be practically lost if it were confined to cases of pecuniary gain. If the preceding phrase, "ransom or reward," suggests the category of pecuniary benefit, the phrase "or otherwise" must be at least broad enough to include other kinds of benefit or advantage.

The construction contended for by the Government is compelled, we submit, by the express inclusion of an exception in the statute; namely, the case of the kidnaping of a minor child by its parent. Manifestly it was the intention of Congress that such cases would be embraced within the language of the Act unless specific exception for them were made. The ordinary motive in such kidnapings is

the desire to secure the custody of the child from the other spouse. In such cases the motive is not pecuniary, but is instead the enjoyment of the custody, society and care of the child. The construction urged by the appellant ignores the significance of this exception.

The effect of a specific exception in a statute has frequently been noted by this Court. As was said in *Brown* v. *Maryland,* 12 Wheat. 419, 438, "the exception of a particular thing from general words, proves that, in the opinion of the law-giver, the thing excepted would be within the general clause, had the exception not been made." See also *Gibbons* v. *Ogden,* 9 Wheat. 1, 191; *Arnold* v. *United States,* 147 U. S. 494, 499; *Hopkins* v. *United States,* 235 Fed. 95, 98 (C. C. A. 8th).

The fact that the statute is penal in character and is, therefore, to be strictly construed does not militate against the construction for which the Government contends. The rule of strict construction is not violated by allowing words to have their full meaning where such construction best harmonizes with the context and gives effect to the intention of the legislature. See *Ash Sheep Co.* v. *United States,* 252 U. S. 159, 170; *United States* v. *Bowman,* 260 U. S. 94, 102; *Johnson* v. *Southern Pacific Co.,* 196 U. S. 1, 17. The applicable principle was succinctly stated by this Court in *United States* v. *Hartwell,* 6 Wall. 385, 395:

> We are not unmindful that penal laws are to be construed strictly. It is said that this

> rule is almost as old as construction itself. But whenever invoked it comes attended with qualifications and other rules no less important. * * * The proper course in all cases is to adopt that sense of the words which best harmonizes with the context, and promotes in the fullest manner the policy and objects of the legislature. The rule of strict construction is not violated by permitting the words of the statute to have their full meaning, or the more extended of two meanings, as the wider popular instead of the more narrow technical one; but the words should be taken in such a sense, bent neither one way nor the other, as will best manifest the legislative intent.

It is as true of penal statutes as of those in derogation of the common law that while they "are to be construed strictly, 'they are also to be construed sensibly, and with a view to the object aimed at by the legislature.' " *Johnson* v. *Southern Pacific Co.*, *supra*, at 17.

II

THE LEGISLATIVE HISTORY OF THE STATUTE CONFIRMS THE FOREGOING CONSTRUCTION

The Act of June 22, 1932, c. 271, Sec. 1, 47 Stat. 326, contained simply the phrase "held for ransom or reward." That Act incorporated the provisions of the Senate bill, S. 1525, 72d Cong., 1st Sess., as reported by the Senate Committee on the Judiciary. See Senate Report 765, 72d Cong., 1st Sess. It is

significant, however, that as originally introduced in the Senate the bill contained the phrase "held for ransom or reward, or held for any other unlawful purpose." *Ibid.* The excision of the latter words was accepted by the Senate without discussion. 75 Cong. Rec., p. 12318.

In the House, on the other hand, the debates throw light upon the scope of the bill as originally introduced and the reasons for its change as finally enacted. The Committee on the Judiciary in the House reported the Senate bill as a substitute for the House bill. 75 Cong. Rec., pp. 13282, 13287. But the original House bill, which was substantially identical with the original Senate bill as introduced, was brought forward as a proposed amendment to the bill reported by the Committee. *Idem,* 13294. This amendment included the phrase "or held for any other unlawful purpose." The debate on this amendment elicited opposition to it on the ground that it would include cases of kidnaping of a child by the parent, which certain members regarded as of a distinctly less heinous character than other classes of unlawful kidnaping. *Idem,* 13296. In addition to such cases, the phrase in question would have included, as stated by the author of the bill, Mr. Cochran, cases of the abduction of a witness and transportation across a State line, in order to prevent his appearance in court. The amendment was finally rejected. *Ibid.* Thereupon, in order to broaden the scope of the reported bill in a some-

what less degree, it was proposed that the language be amended to read " ransom, reward or revenge ". This proposal was objected to on the ground that it introduced impractical difficulties of proof; and opponents of the broader version conceded that the new proposal was on that account more objectionable than the former. It also was rejected. *Idem,* 13298. The bill as passed by the Senate was thereafter adopted by the House. *Idem,* 13304.

The history of the original Act thus discloses an intention on the part of Congress to cope with the common class of kidnapings, a proposal to deal with all interstate kidnapings, and a reluctance to include the case of kidnaping of a child by its parent. The only middle ground suggested was rejected because it introduced difficulties of proof.

The enactment of the original Act was a recognition that kidnaping in latter years had assumed the proportions of a highly organized industry operating without regard to State boundaries. See Hearings before the Committee on the Judiciary, House of Representatives, on H. R. 5657, 72d Cong., 1st Sess.; and for a discussion of the conditions leading up to the enactment of the statute see Fisher and McGuire, *Kidnaping and the So-called Lindbergh Law,* 12 N. Y. U. Law Q. Rev. 646–655. The Report of the Senate Committee, No. 765, 72d Cong., 1st sess., stated the purpose of the legislation to be the following:

> The purpose of this proposed legislation is to assist the States in stamping out the

> growing menace of kidnaping. Kidnapers often seize a person in one State and transport him into another State. The police officers of the first State have no authority to follow into the second State but are compelled to rely wholly on the efforts of the police officers of the second State.

After the Act had been in effect for two years the words in question in the case at bar were added. Act of May 18, 1934, c. 301, 48 Stat. 781. The scope of the amended language is indicated by the debates on the original Act. It is obvious that after an interval of two years Congress reverted to the scope of the bills as originally introduced in 1932, with provision, however, for the type of case which impelled a rejection of the language of those bills in the first instance. That is, Congress determined that the law should no longer be limited to cases of kidnaping for ransom or reward. The words adopted to accomplish this purpose were doubtless chosen with a view to economy of language and mechanical ease of amendment.

The Committee Reports disclose the scope and purpose of the amendatory language adopted in 1934. The Report of the House Committee on the Judiciary stated (H. Rep. 1457, 73d Cong., 2d Sess.):

> First, it is proposed to add the words "or otherwise, except, in the case of a minor, by a parent thereof". This will extend Federal jurisdiction under the act to persons who

> have been kidnaped and held, not only for reward, but for any other reason, except that a kidnaping by a parent of his child is specifically exempted.

The Report of the Senate Committee on the Judiciary (S. Rep. 534, 73d Cong., 2d Sess.) stated:

> The object of the addition of the word "otherwise" is to extend the jurisdiction of this act to persons who have been kidnaped and held, not only for reward, but for any other reason.

The conclusion is inescapable from the legislative history that the statute as amended includes every kidnaping involving interstate transportation where the victim is held for any recompense, benefit or advantage, except in the case of the kidnaping of a minor child by its parent. The fact that the language in question was deliberately added by amendment after the Act had been in operation repels any suggestion that the amendatory language must be construed in the narrow way urged by the appellant. A similarly narrow construction was rejected by this Court in *United States* v. *Limehouse,* 285 U. S. 424, 426, on the ground that such a construction "emptied the amendment of all meaning". See also *Louisville & Nashville Railroad* v. *Mottley,* 219 U. S. 467, 475; *Johnson* v. *United States,* 225 U. S. 405, 415.

The history of the amendatory statute compels the conclusion that a substantially broader category was meant to be embraced than had been in-

cluded in the original Act; and the specification of the exception which had prevented the earlier adoption of the broad language reenforces this conclusion. In *United States* v. *Bitty,* 208 U. S. 393, 401, this Court said:

> Now the addition in the last statute of the words, "or for any other immoral purpose," after the word "prostitution," must have been made for some practical object. Those added words show beyond question that Congress had in view the protection of society against another class of alien women other than those who might be brought here merely for purposes of "prostitution." In forbidding the importation of alien women "for any other immoral purpose," Congress evidently thought that there were purposes in connection with the importations of alien women which, as in the case of importations for prostitution, were to be deemed immoral. * * *

Where the intention of the legislature is thus apparent from the Act as a whole and its legislative history, the rule of *ejusdem generis* will not be applied to reach a contrary result. This Court has pointed out that the rule of *ejusdem generis* is one of construction to aid in ascertaining the intent of the law makers, not to defeat or subvert it. *United States* v. *Mescall,* 215 U. S. 26, 31; *Danciger* v. *Cooley,* 248 U. S. 319, 326; *Mason* v. *United States,* 260 U. S. 545, 554; *Mid-Northern Co.* v. *Montana,* 268 U. S. 45, 49; *Texas* v. *United States,* 292 U. S.

522, 534. See also *Willis* v. *Mabon,* 48 Minn. 140, 156, *per* Mitchell, J. These principles will be applied in criminal as well as civil cases. *Cf. People* v. *Miles,* 143 N. Y. 383, and cases cited in Appendix B, *infra,* pp. 22–25, in which the courts have declined to apply the rule of *ejusdem generis* in construing the word "otherwise."

It is unnecessary in the case at bar to give dominant effect to either the language of the statute alone or to the legislative history alone. Compare *Caminetti* v. *United States,* 242 U. S. 470, with *Church of the Holy Trinity* v. *United States,* 143 U. S. 457. In the case at bar the language of the statute and the legislative history alike point to the conclusion that the amendatory language cannot be limited to cases of kidnaping for pecuniary gain but must include cases of kidnaping for other advantages such as the prevention of arrest.

III

EVEN IF THE STRICTEST RULES OF CONSTRUCTION BE APPLIED, IT IS SUBMITTED THAT THE KIDNAPING OF AN ARRESTING OFFICER TO PREVENT ARREST IS A KIDNAPING "FOR RANSOM OR REWARD OR OTHERWISE", THE SUBSTANTIAL BENEFIT TO THE KIDNAPER CONSTITUTING HIS REWARD OR RECOMPENSE AKIN THERETO

In their brief in the Circuit Court of Appeals, counsel for the appellant argued that the words "or otherwise" added to "ransom or reward" were intended to embrace those kidnapings where the motive was "extortion, blackmail, robbery or

sale"—in other words, pecuniary gain. But it is not clear why "reward" should be thus restricted in meaning. Reward is defined by Webster as "that which is given in return for good or evil done or received; esp., that which is offered or given for some service or attainment, as a prize for excellence in studies, a sum of money for the return of something lost or for the capture of a criminal, etc.; recompense; requital." What of the cases where the victim is kidnaped in order to prevent him from prosecuting his abductor, or testifying against him in court, or in order to compel him to any course of conduct detrimental to him and beneficial to his kidnaper? Is the cash reward in a kidnaping for blackmail or robbery a recompense or benefit of different legal significance from any other benefit or advantage to secure which the kidnaping may be perpetrated?

In *United States* v. *Bitty,* 208 U. S. 393, the defendant was charged under a statute which prohibited the importation into the United States of any woman or girl for the purpose of prostitution or for any other immoral purpose. The defendant brought the woman in question into the United States for the purpose of concubinage and not prostitution. This Court held that the phrase "or for any other immoral purpose", which was added to the original statute by subsequent Act, enlarged the class of prostitution to make it include an immoral purpose such as concubinage. The Court said (p. 402):

> It may be admitted that in accordance with the familiar rule of *ejusdem generis,* the immoral purpose referred to by the words "any other immoral purpose," must be one of the same general class or kind as the particular purpose of "prostitution" specified in the same clause of the statute. 2 Lewis' Sunderland Stat. Const., Sec. 423, and authorities cited. But that rule cannot avail the accused in this case; for, the immoral purpose charged in the indictment is of the same general class or kind as the one that controls in the importation of an alien woman for the purpose strictly of prostitution. The prostitute may, in the popular sense, be more degraded in character than the concubine, but the latter none the less must be held to lead an immoral life. * * * Chief Justice Marshall, speaking for the court, said that "though penal laws are to be construed strictly, they are not to be construed so strictly as to defeat the obvious intention of the legislature. The maxim is not to be so applied as to narrow the words of the statute to the exclusion of cases which those words, in their ordinary acceptation, or in that sense in which the legislature has obviously used them, would comprehend. * * *

In *Caminetti* v. *United States,* 242 U. S. 470, the defendant was convicted under the White Slave Act for transporting a woman in interstate commerce for the purpose of becoming his concubine or mistress. Defendant contended that such act did not violate the statute which prohibits the transporta-

tion of a woman or girl in interstate commerce for the purpose of prostitution or debauchery or for any other immoral purpose. This Court held that the charge against the defendant was within the purview of the statute.

From these holdings of this Court, it appears that even if the phrase "or otherwise" is restricted to mean "or like purposes", it nevertheless enlarges the originall kidnaping Act and is broad enough to include kidnaping and holding for the purpose of securing the benefit of preventing arrest.

Nor is the case of *United States* v. *Sheldon,* 2 Wheat. 118, relied upon by appellant, authority for such a construction of the word "otherwise" as would justify a negative answer to the questions certified. That case held that the driving of cattle on foot was not within the statutory words "shall transport, or attempt to transport, overland or otherwise, in any wagon, cart, sleigh, boat or otherwise." The decision in that case turned on the definition of "transport", and not on the definition of "otherwise". Whatever may be the soundness of that decision, it is no precedent for a construction of the word "otherwise" that would so narrow its sense as to deprive the statute of the meaning intended by Congress, as shown by the language of the Act as a whole and its legislative history.

CONCLUSION

We submit that the language of the statute, its legislative history, and the applicable rules of

statutory construction require that the Federal Kidnaping Act be construed to include all cases of kidnaping where the victims are held not only for ransom or reward but for other recompense, benefit or advantage whether pecuniary or otherwise, except only in the case of a minor by the parent thereof; and that both questions should be answered in the affirmative.

Respectfully submitted.

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JANUARY, 1936.

APPENDIX A

The Federal Kidnaping Act of June 22, 1932, c. 271, 47 Stat. 326, provides as follows:

> That whoever shall knowingly transport or cause to be transported, or aid or abet in transporting, in interstate or foreign commerce, any person who shall have been unlawfully seized, confined, inveigled, decoyed, kidnaped, abducted, or carried away by any means whatsoever and held for ransom or reward shall, upon conviction, be punished by imprisonment in the penitentiary for such term of years as the court, in its discretion, shall determine: *Provided,* That the term "interstate or foreign commerce" shall include transportation from one State, Territory, or the District of Columbia to another State, Territory, or the District of Columbia, or to a foreign country; or from a foreign country to any State, Territory, or the District of Columbia: *Provided further,* That if two or more persons enter into an agreement, confederation, or conspiracy to violate the provisions of the foregoing Act and do any overt act toward carrying out such unlawful agreement, confederation, or conspiracy such person or persons shall be punished in like manner as hereinbefore provided by this Act.

This Act was amended by the Act of May 18, 1934, c. 301, 48 Stat. 781, as follows:

> That the Act of June 22, 1932 (U. S. C., ch. 271, title 18, sec. 408a), be, and the same is hereby, amended to read as follows:
>
> Whoever shall knowingly transport or cause to be transported, or aid or abet in transporting, in interstate or foreign commerce, any person who shall have been un-

lawfully seized, confined, inveigled, decoyed, kidnaped, abducted, or carried away by any means whatsoever and held for ransom or reward or otherwise, except, in the case of a minor, by a parent thereof, shall, upon conviction, be punished (1) by death if the verdict of the jury shall so recommend, provided that the sentence of death shall not be imposed by the court if, prior to its imposition, the kidnaped person has been liberated unharmed, or (2) if the death penalty shall not apply nor be imposed the convicted person shall be punished by imprisonment in the penitentiary for such term of years as the court in its discretion shall determine: *Provided,* That the failure to release such person within seven days after he shall have been unlawfully seized, confined, inveigled, decoyed, kidnaped, abducted, or carried away shall create a presumption that such person has been transported in interstate or foreign commerce, but such presumption shall not be conclusive.

SEC. 2. The term "interstate or foreign commerce", as used herein, shall include transportation from one State, Territory, or the District of Columbia to another State, Territory, or the District of Columbia, or to a foreign country, or from a foreign country to any State, Territory, or the District of Columbia.

SEC. 3. If two or more persons enter into an agreement, confederation, or conspiracy to violate the provisions of the foregoing Act and do any overt act toward carrying out such unlawful agreement, confederation, or conspiracy, such person or persons shall be punished in like manner as hereinbefore provided by this Act.

(18 U. S. C., Secs. 408a, 408b, 408c.)

APPENDIX B

Many courts recognizing the rule of *ejusdem generis* have nevertheless construed "otherwise" as meaning "contrarily", "differently", or "in another or different manner". Some of these decisions are listed below.

United States Supreme Court:

Burlington & M. R. R. Co. v. *Fremont,* 9 Wall. 89, 94.
Collector v. *Hubbard,* 12 Wall. 1, 18.
State of Wisconsin v. *Lane,* 245 U. S. 427, 434.

Federal:

United States v. *Bettilini,* 24 Fed. Cas. No. 14587, pp. 1135, 1136 (C. C. N. D. Fla.).
Franklin Sugar Refining Co. v. *United States,* 137 Fed. 655, 658 (C. C. E. D. Pa.).
Cramer v. *United States,* 276 Fed. 78, 79–81 (C. C. A. 9th).

Arkansas:

Matthews v. *Kimball,* 70 Ark. 451, 462.

California:

Daniels v. *Gualala Mill Co.,* 77 Cal. 300, 303.
Contra Costa Water Co. v. *Breed,* 139 Cal. 432, 441.

Connecticut:

Sheehy v. *Barry,* 87 Conn. 656, 662.

Georgia:

Carter v. *Johnson,* 156 Ga. 207, 212.

Illinois:

Carpenter v. *Mitchell,* 54 Ill. 126, 131.
Thompson v. *City of Highland Park,* 187 Ill. 265, 268.

Iowa:

McClanahan v. *McClanahan,* 129 Ia. 411.

Kansas:

American State Bank v. *Wilson,* 110 Kan. 520, 529.

Louisiana:

Sibley v. *Pierson,* 125 La. 478, 511.

Michigan:

Higler v. *People,* 44 Mich. 299, 300.
Radley v. *Seider,* 99 Mich. 431, 433.
Spencer v. *Johnson,* 185 Mich. 85, 88, 89.

Minnesota:

Smith v. *Library Board of City of Minneapolis,* 58 Minn. 108, 110.

Missouri:

Lynch v. *Murphy,* 119 Mo. 163, 167.
Webb v. *Mo. State Life Ins. Co.,* 134 Mo. App. 576, 579–580.

Nebraska:

State v. *Dennison,* 60 Neb. 157, 162.

New Hampshire:

Backus v. *Lebanon,* 11 N. H. 19, 27.
Attorney General v. *Taggart,* 66 N. H. 362, 364.

New Jersey:

Black v. *Delaware & R. Canal Co.,* 22 N. J. Eq. (7 C. E. Greene), 130, 393, 400.

New Mexico:

Curran v. *Gutierrez,* 12 N. M. 254, 273.

New York:

New York State Loan & Trust Co. v. *Helmer,* 77 N. Y. 64, 67.
People v. *Greenwall,* 115 N. Y. 520, 523.
People v. *Miles,* 143 N. Y. 383, 389.
People v. *Patini,* 208 N. Y. 176, 178.
Carpenter v. *Romer & Tremper Steamboat Co.,* 48 App. Div. 363, 370.
People v. *Feitner,* 71 App. Div. 479, 481, 482.
In re Perry's Will, 126 Misc. Rep. 616.

North Carolina:

State v. *Shade,* 115 N. C. 757, 759.

North Dakota:

Bank of Park River v. *Town of Norton,* 14 N. D. 143, 146.

Ohio:

State v. *Kelly,* 32 Ohio St. 421, 429.
Nagle v. *Brown,* 37 Ohio St., 7, 10.
Ashland Bank & Savings Co. v. *Houseman,* 5 Ohio App. 165, 175.

Pennsylvania:

Commonwealth v. *Dichert,* 195 Pa. 234, 240.
McCune v. *Berrny,* 237 Pa. 572, 579.

Rhode Island:

Malafronte v. *Miloni,* 35 R. I. 225, 227.

South Carolina:

Davis v. *Milady,* 92 S. C. 135, 142, 143.

Texas:

Kentucky Oil Corp. v. *David* (Tex.), 285 S. W. 290, 292.

West Virginia:

Trough v. *Trough*, 59 W. Va. 464, 474, 115 Am. St. Rep. 940, 8 Ann. Cas. 827.

Gauley Coal Land Co. v. *Koontz*, 77 W. Va. 583, 585.

Wisconsin:

McCaffrey v. *Town of Shields*, 54 Wis. 645.

Wyoming:

State v. *Scott*, 35 Wyo. 108, 141–145.

U. S. GOVERNMENT PRINTING OFFICE: 1936

SUPREME COURT OF THE UNITED STATES.

No. 559.—October Term, 1935.

Arthur Gooch,
vs.
United States of America.

On Certificate from the United States Circuit Court of Appeals for the Tenth Circuit.

[February 3, 1936.]

Mr. Justice McReynolds delivered the opinion of the Court.

By permission of Sec. 346, 28 U. S. C. A., the Circuit Court of Appeals, 10th Circuit, has certified two questions and asked instruction.

1. Is holding an officer to avoid arrest within the meaning of the phrase, "held for ransom or reward or otherwise", in the act of June 22, 1932, as amended May 18, 1934 (48 St. 781), 18 U. S. C. A. 408a?

2. Is it an offense under Section 408a, *supra*, to kidnap and transport a person in interstate commerce for the purpose of preventing the arrest of the kidnaper?

The statement revealing the facts and circumstances out of which the questions arise follows—

"Gooch was convicted and sentenced to be hanged under an indictment charging that he, with one Nix, kidnaped two officers at Paris, Texas, 'for the purpose of preventing his (Gooch's) arrest by the said peace officers in the State of Texas', and transported them in interstate commerce from Paris, Texas, to Pushmataha County, Oklahoma, and at the time of the kidnaping did bodily harm and injury to one of the officers from which bodily harm the officer was suffering at the time of his liberation by Gooch and Nix in Oklahoma.

"The proof supports the charge. It established these facts: Gooch and Nix, while heavily armed, were accosted by the officers at Paris, Texas. To avoid arrest, Gooch and Nix resisted and disarmed the officers, unlawfully seized and kidnaped them and transported them by automobile from Texas to Oklahoma, and liberated

them in the latter State. During the time Gooch and Nix were kidnaping the officers they inflicted serious bodily injury upon one of the officers, from which injury he was suffering at the time of such liberation in the State of Oklahoma".

The Act of June 22, 1932, c. 271, 47 Stat. 326, prodived—

> That whoever shall knowingly transport or cause to be transported, or aid or abet in transporting, in interstate or foreign commerce, any person who shall have been unlawfully seized, confined, inveigled, decoyed, kidnaped, abducted, or carried away by any means whatsoever and held for ransom or reward shall, upon conviction, be punished by imprisonment in the penitentiary for such term of years as the court, in its discretion, shall determine.

The amending Act of May 18, 1934, c. 301, 48 Stat. 781, 18 U. S. C. A. 408a, declares—

> Whoever shall knowingly transport or cause to be transported, or aid or abet in transporting, in interstate or foreign commerce, any person who shall have been unlawfully seized, confined, inveigled, decoyed, kidnaped, abducted, or carried away by any means whatsoever and held for ransom or reward *or otherwise, except, in the case of a minor, by a parent thereof,* shall, upon conviction, be punished (1) by death if the verdict of the jury shall so recommend, provided that the sentence of death shall not be imposed by the court if, prior to its imposition, the kidnaped person has been liberated unharmed, or (2) if the death penalty shall not apply nor be imposed the convicted person shall be punished by imprisonment in the penitentiary for such term of years as the court in its discretion shall determine: . . .".

Counsel for Gooch submit that the words "ransom or reward" import "some pecuniary consideration or payment of something of value"; that as the statute is criminal the familiar rule of *ejusdem generis* must be strictly applied; and finally, it cannot properly be said that a purpose to prevent arrest and one to obtain money or something of pecuniary value are similar in nature.

The original Act (1932) required that the transported person should be held "for ransom or reward". It did not undertake to define the words and nothing indicates an intent to limit their

meaning to benefits of pecuniary value. Generally, reward implies something given in return for good or evil done or received.

Informed by experience during two years, and for reasons satisfactory to itself, Congress undertook by the 1934 Act to enlarge the earlier one and to clarify its purpose by inserting "or otherwise, except, in the case of a minor, by a parent thereof", immediately after "held for ransom or reward". The history of the enactment emphasized this view.

The Senate Judiciary Committee made a report, copied in the margin,[1] recommending passage of the amending bill and pointing out the broad purpose intended to be accomplished.

The House Judiciary Committee made a like recommendation and said—

> This bill, as amended, proposes three changes in the act known as the "Federal Kidnaping Act." First, it is proposed to add the words "or otherwise, except, in the case of a minor, by a parent thereof." This will extend Federal jurisdiction under the act to persons who have been kidnaped and held, not only for reward, but for any other reason, except that a kidnaping by a parent of his child is specifically exempted. . . . H. Rep. 1457, 73d Cong., 2d Sess., May 3, 1934.

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[1] The Committee on the Judiciary, having had under consideration the bill (S. 2252) to amend the act forbidding the transportation of kidnaped persons in interstate commerce, reports the same favorably to the Senate and recommends that the bill do pass.

The purpose and need of this legislation are set out in the following memorandum from the Department of Justice:

S. 2252; H. R. 6918: This is a bill to amend the act forbidding the transportation of kidnaped persons in interstate commerce—act of June 22, 1932 (U. S. C., ch. 271, title 18, sec. 408a), commonly known as the 'Lindbergh Act.' This amendment adds thereto the word 'otherwise' so that the act as amended reads: 'Whoever shall knowingly transport . . . any person who shall have been unlawfully seized . . . and held for ransom or reward or otherwise shall, upon conviction, be punished . . . .' The object of the addition of the word 'otherwise' is to extend the jurisdiction of this act to persons who have been kidnaped and held, not only for reward, but for any other reason.

In addition, this bill adds a proviso to the Lindbergh Act to the effect that in the absence of the return of the person kidnaped and in the absence of the apprehension of the kidnaper during a period of 3 days, the presumption arises that such person has been transported in interstate or foreign commerce, but such presumption is not conclusive.

I believe that this is a sound amendment which will clear up border-line cases, justifying Federal investigation in most of such cases and assuring the validity of Federal prosecution in numerous instances in which such prosecution would be questionable under the present form of this act. S. Rep. 534, 73d Cong., 2d Sess., March 22, 1934.

Evidently, Congress intended to prevent transportation in interstate or foreign commerce of persons who were being unlawfully restrained in order that the captor might secure some benefit to himself. And this is adequately expressed by the words of the enactment.

The rule of *ejusdem generis,* while firmly established, is only an instrumentality for ascertaining the correct meaning of words when there is uncertainty. Ordinarily, it limits general terms which follow specific ones to matters similar to those specified; but it may not be used to defeat the obvious purpose of legislation. And, while penal statutes are narrowly construed, this does not require rejection of that sense of the words which best harmonizes with the context and the end in view. *United States* v. *Hartwell,* 6 Wall. 385, 395; *Johnson* v. *Southern Pacific Co.,* 196 U. S. 1-17, 18; *United States* v. *Bitty,* 208 U. S. 393, 402; *United States* v. *Mescall,* 215 U. S. 26-31, 32.

Holding an officer to prevent the captor's arrest is something done with the expectation of benefit to the transgressor. So also is kidnaping with purpose to secure money. These benefits, while not the same, are similar in their general nature and the desire to secure either of them may lead to kidnaping. If the word reward, as commonly understood, is not itself broad enough to include benefits expected to follow the prevention of an arrest, they fall within the broad term, "otherwise".

The words "except, in case of a minor, by a parent thereof" emphasize the intended result of the enactment. They indicate legislative understanding that in their absence a parent, who carried his child away because of affection, might subject himself to condemnation of the statute. *Brown* v. *Maryland,* 12 Wheaton, 419, 438.

Both questions must be answered in the affirmative.